

When merchandise is sold to a Parent Teacher Association or to a school and that Parent Teacher Association or school will re-sell the merchandise, the entity selling to the Parent-Teacher Association or school must obtain either a Certificate of Resale or a valid "E" number from the Parent Teacher Association or school in order to sell the items tax-free. See 86 Ill. Adm. Code 130.2005. (This is a GIL.)

November 29, 2005

Dear Xxxxx:

This letter is in response to your letter dated March 11, 2005, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

I am inquiring on behalf of a client who has a Sales Tax issue that needs clarification and am asking your office for a ruling on the matter. We have read both Sections 130.2005 and 130.2009 and have found the interpretation to be varied dependant on how the Sections are read. We have had several conversations with different staff members in your offices and again receive different answers - nothing consistent.

We will be doing retail business with some of the Grade Schools in Illinois over the Holiday Seasons. We do understand that Schools have an "E" (exemption) number and that schools are exempt from sales tax, for certain purchases on items used by the school or its members.

OUR SITUATION:

The schools will be setting up what they call a Holiday Store or Secret Santa Shop. Our business sells items to the Parent Teacher Associations affiliated with these schools as a fund raising activity. Items such as coffee cups, costume jewelry, key chains, golf balls, trinket items....

The PTA's in turn have the children come into an area in which the items are displayed and sell these items to the children to give to their families and friends as Christmas Gifts. The items that are sold to the children range in price from \$1.00 - \$5.00 as a rule.

OUR QUESTION:

1. Am I responsible for collecting Sales Tax when I sell these items to the PTA's?
2. Am I responsible for collecting Sales Tax if I sell directly to the school?
3. Is the school or PTA responsible for collecting and remitting Sales Tax? Therefore making my sale to them a resale issue.

A Ruling on this matter as soon as is possible would be greatly appreciated as we have been trying to resolve this matter for some time, to no avail, would like to know in which direction we need to proceed.

Thank you for your time and consideration in this matter.

DEPARTMENT'S RESPONSE:

We will address your questions in order.

Questions 1 & 2

The Illinois Retailers' Occupation Tax applies to retail sales of tangible personal property unless the seller can document an exemption. If a seller is making a sale for resale, the seller is obligated to obtain a valid Certificate of Resale from its purchaser. See 86 Ill. Adm. Code 130.1405. When merchandise is sold to a Parent Teacher Association or to a school and that Parent Teacher Association or school will re-sell the merchandise, the entity selling to the Parent-Teacher Association or school may obtain a Certificate of Resale from the Parent Teacher Association or school in order to sell the items tax-free. However, if the Parent Teacher Association or school is purchasing the merchandise to resell during one of its 2 annual sales events that are eligible for exemption from tax as "occasional dinners and similar activities", then the seller may accept the Parent Teacher Association's or school's "E" number in lieu of a Certificate of Resale to make the sale tax-free (see the answer to Question 3 below).

Question 3

An organization like a Parent Teacher Association or a school that qualifies as exclusively religious, charitable, or educational can apply to the Illinois Department of Revenue to obtain a tax exemption identification number ("E" number). See 86 Ill. Adm. Code 130.2007. While organizations and institutions that are both operated and organized exclusively for charitable, religious, or educational purposes are, as a general matter, subject to Retailers' Occupation Tax upon their own sales of tangible personal property, there are three limited exceptions where such organizations are authorized to engage in a restricted amount of retail selling activity without incurring Retailers' Occupation Tax liability. See 86 Ill. Adm. Code 130.2005(a). Organizations that hold "E" numbers may, without incurring Retailers' Occupation Tax liability, engage in (i) sales to members, (ii) noncompetitive sales, and (iii) up to two times per year, certain occasional dinners and similar activities.

Typically, fund-raising events held by a Parent Teacher Association fall under item (iii) above. For sales to a Parent Teacher Association or a school in connection with fund-raising projects the

Parent Teacher Association or school may provide the seller with its "E" number if the Parent Teacher Association or school is making purchases for one of its two eligible fund-raising events per year. However, if the Parent Teacher Association or school engages in this type of fund-raising more than twice a year, then for any purchases it makes for resale at a fund-raiser after the second fund-raiser in a year, it will need to provide the seller with a Certificate of Resale and charge sales tax on its sales. See generally 86 Ill. Adm. Code 130.2005(a)(4). In either case, the entity making the sale to the Parent Teacher Association or school may make the sale tax-free because it will either be an exempt sale to an exclusively religious, charitable, or educational organization or an exempt sale for resale.

Assuming that the supplier in question is a for-profit supplier to the fund-raising entities, Section 130.2009 does not apply to the facts presented in this General Information Letter request. The language of the rule provides that the exemption in Section 130.2009 does not apply to situations "for which the fund-raising entity purchases the personal property sold at the events from another individual or entity that sold the property for the purpose of resale by the fund-raising entity and that profits from the sale to the fund-raising entity." (See 86 Ill. Adm. Code 130.2009(a)(2)).

I hope this information is helpful. If you require additional information, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Sincerely,

Samuel J. Moore
Associate Counsel

SJM:msk